

Appl No 10/620,117
Amdt. dated August 1, 2006

Reply to Office Action of May 25, 2006
Attorney Docket 12618

REMARKS

Claims 1-4, 7, 8 and 10-18 are pending in this application. Claims 1, 4, 8, 11, 12 and 16 are amended. No new matter is added. Favorable reconsideration and allowance of this application is respectfully requested in light of the amendments and the foregoing remarks.

Rejection of claims 1-4, 7-8 and 10-18 under 35 U.S.C. §112

Claims 1-4, 7-8 and 10-18 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter.

Applicants would like to thank the Examiner for his recommended claim amendments to claims 1, 4, 8, 11, 12, and 16. The Examiner's recommended claim amendments to claims 1, 4, 8, 11, 12, and 16 have been incorporated herein.

Accordingly, Applicants respectfully request removal of this rejection.

Rejection of claims 1-3, 11-14 and 18 under 35 U.S.C. §102

Claims 1-3, 11-14 and 18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Published Patent Application No. 2002/0083695 to Behnke et al. (hereinafter referred to as "Behnke").

Claim 1 is amended to recite an unloading conduit assembly for unloading grain from the combine into a grain truck displaced horizontally from the grain tank, the combine having a longitudinal axis parallel with a combine direction of travel. In addition, claim 1 is amended to recite that said vertical conduit also being mounted on the combine for sideways pivoting of at least a first portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot

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axis is parallel to the longitudinal axis of the combine and the horizontal conduit extends along the longitudinal axis. According to the Office Action, Behnke is capable of permitting "retracting of said horizontal conduit into a storage position." However, nowhere does Behnke describe or suggest a vertical conduit being mounted on the combine for sideways pivoting of at least a first portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine and the horizontal conduit extends along the longitudinal axis. Rather, Behnke discloses in paragraph [0027] that "the operator can adjust the height of the crop pick-up device 2, pivot the transfer device 3 about its vertical axis of rotation 10, control the direction of the transfer flap 9, and alter the height of the transfer device 3 about its horizontal axis of rotation 15."

The horizontal axis of rotation 15 of Behnke is clearly non-parallel with the longitudinal axis of the combine, wherein the longitudinal axis of the combine is parallel with a combine direction of travel. In fact, the horizontal axis of rotation 15 is perpendicular to the longitudinal axis of the combine. Even if the transfer device 3 were rotated about its vertical axis of rotation 10 in order to align the horizontal axis of rotation 15 with the longitudinal axis of the combine, the transfer device 3 would be incapable of altering its height to a storage position because the transfer device 3 would be projecting sideways from the combine as shown in Figure 2 of Behnke. Applicants respectfully submit that Behnke does not describe nor suggest the subject matter of claim 1. Accordingly, allowance of claim 1 is respectfully requested. Claims 2, 3, 11-14 and 18 depend directly or indirectly from claim 1 and are allowable for at least the same reasons as claim 1.

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Rejection of claims under 35 U.S.C. §103

Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Behnke in view of U.S. Patent No. 4,907,402 to Pakosh.

Claim 10 is dependent on claim 1. As discussed above, Behnke does not describe nor suggest a vertical conduit also being mounted on the combine for sideways pivoting of at least a first portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine and the horizontal conduit extends along the longitudinal axis, as required by claim 1. Pakosh is cited for allegedly disclosing an auger within an unloading conduit assembly. Pakosh does not remedy the deficiencies of Behnke. Thus, neither Behnke nor Pakosh, alone or in combination, describe or suggest a vertical conduit being mounted on the combine for sideways pivoting of at least a first portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine and the horizontal conduit extends along the longitudinal axis. Accordingly, allowance of claim 10 is respectfully requested.

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Conclusion

Applicants respectfully submit that claims 1-4, 7, 8 and 10-18 define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

No fee is believed due with this communication. Nevertheless, should the Examiner consider any fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 14-0780. The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,



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